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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 THE CENTER FOR INVESTIGATIVE
REPORTING AND PATRICK MICHELS,

12 Plaintiffs,

13
14 v.

15 U.S. DEPARTMENT OF HOMELAND
SECURITY,

16 Defendant.
17

Case No. 4:18-CV-02711 DMR

**STIPULATION OF SETTLEMENT OF
ATTORNEY'S FEES AND DISMISSAL**

18 Plaintiffs, the Center for Investigative Reporting and Patrick Michels, and Defendant U.S.
19 Department of Homeland Security ("DHS"), hereby stipulate as follows:

20 WHEREAS, on May 8, 2018, Plaintiffs filed a Complaint under the Freedom of Information Act
21 ("FOIA") ("Complaint") seeking disclosure of DHS records (the "FOIA Request"), Dkt. No. 1;

22 WHEREAS, on October 11, 2019, the Court dismissed with prejudice Plaintiffs' FOIA claims
23 pursuant to the parties' stipulation, with the exception of the issue of attorney's fees, Dkt. No. 44;

24 WHEREAS, the parties wish to avoid any further litigation and controversy and to settle and
25 compromise fully any and all claims and issues that have been raised, or could have been raised in this
26 action with regard to Plaintiffs' attorney's fees related to their FOIA claims in the above-captioned
27 litigation.
28

Stipulation of Settlement of Attorney's Fees and Dismissal
4:18-CV-02711 DMR

1 NOW THEREFORE, in consideration of the mutual promises contained in this Stipulation, and
2 other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as
3 follows:

4 1. **Settlement Amount.** Defendant agrees to pay the sum of \$7,250.00 (seven thousand two
5 hundred fifty dollars (“Settlement Amount”) to Plaintiffs in full in complete satisfaction of Plaintiffs’
6 claims for attorney’s fees and costs under FOIA, 5 U.S.C. § 552, as amended, in the above-captioned
7 matter. This payment shall constitute full and final satisfaction of any and all of Plaintiffs’ claims for
8 attorney’s fees, costs, and litigation expenses in the above-captioned matter, and is inclusive of any
9 interest.

10 2. **Dismissal of Action.** Plaintiffs voluntarily dismiss this suit with prejudice based on the
11 terms set forth herein and the Stipulation of Dismissal filed on October 11, 2019, Dkt. No. 44.
12 Execution and filing of this Stipulation of Settlement by counsel for Plaintiffs and counsel for Defendant
13 constitutes a dismissal of the lawsuit, with prejudice.

14 3. **Release.** Upon the execution of this Settlement Agreement, Plaintiffs and their
15 successors or assigns hereby release and forever discharge Defendant, its successors, the United States
16 of America, and any department, agency, or establishment of the United States, and any officers,
17 employees, agents, successors, or assigns of such department, agency, or establishment, from any and all
18 claims and causes of action that Plaintiffs asserted in this litigation, or that hereafter could be asserted by
19 reason of, or with respect to, or in connection with, or that arise out of, the FOIA requests and any
20 related appeals on which this action is based or any other matter alleged in Plaintiffs’ Complaint,
21 including but not limited to all past, present, or future claims for attorney’s fees, costs, or litigation
22 expenses in connection with the above-captioned litigation.

23 4. **No Admission of Liability.** The parties acknowledge that this Settlement Agreement is
24 entered into solely for the purpose of settling and compromising disputed claims in this action and
25 avoiding the expenses and risks of further litigation. It is not intended to be, nor shall it be construed as,
26 evidence or admission of liability, or fault, or as establishing precedent. This Settlement Agreement
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28

1 shall not be used in any manner to establish liability for fees or costs in any other case or proceeding
2 involving Defendant or Plaintiffs.

3 **5. Payment by Electronic Funds Transfer.** Payment of the Settlement Amount shall be
4 deposited by electronic fund transfer to the bank account designated by Plaintiffs' counsel after receipt
5 of necessary information from Plaintiffs. Plaintiffs' attorney agree to provide Defendant's counsel all
6 information necessary to effect the electronic fund transfer to the specified bank account. Defendant
7 will make all reasonable efforts to make payment within thirty (90) days of the Effective Date of this
8 Stipulation but cannot guarantee payment within that time frame.

9 **6. Authority.** The undersigned counsel warrant and represent that they possess full
10 authority to execute this Agreement and to bind the persons on whose behalf they are signing to the
11 terms of the Agreement.

12 **7. Waiver of California Civil Code § 1542.** The provisions of California Civil Code
13 Section 1542 are set forth below:

14 “A general release does not extend to claims which the creditor does not
15 know or suspect to exist in his or her favor at the time of executing the
16 release, which if known by him or her must have materially affected his or
her settlement with the debtor.”

17 Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542, and fully
18 understanding the same, nevertheless elects to waive the benefits of any and all rights it may have
19 pursuant to the provision of that statute and any similar provision of federal law. Plaintiffs understand
20 that, if the facts concerning the liability of the government is found hereinafter to be other than or
21 different from the facts now believed by it to be true, the Agreement shall be and remain effective
22 notwithstanding such difference.

23 **8. Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiffs or
24 Plaintiffs' counsel based on payment of the Settlement Amount, Plaintiffs or Plaintiffs' counsel shall be
25 solely responsible for paying any such determined liability from any government agency. Nothing in
26 this Agreement constitutes an agreement by the United States of America concerning the

1 characterization of the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the
2 United States Code.

3 9. **Enforcement Sole Remedy.** The parties agree that should any dispute arise with respect
4 to the implementation of the terms of this Agreement, neither Plaintiffs nor Defendant shall seek to
5 rescind the Agreement and seek to litigate any causes of action or defenses. The sole remedy in such a
6 dispute is an action to enforce the Agreement in the United States District Court for the Northern
7 District of California.

8 10. **Construction.** Each party hereby stipulates that it has been represented by and has relied
9 upon independent counsel in the negotiations for the preparation of this Agreement, that it has had the
10 contents of the Agreement fully explained to it by such counsel, and that it is fully aware of and
11 understands all of the terms of the Agreement and the legal consequences thereof. For purposes of
12 construction, this Agreement shall be deemed to have been drafted by all parties to this Agreement and
13 shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

14 11. **Severability.** If any provision of this Agreement shall be held invalid, illegal, or
15 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way
16 be affected or impaired thereby.

17 12. **Integration.** This Settlement Agreement shall constitute the entire agreement between
18 the parties, and it is expressly understood and agreed that this Agreement has been freely and voluntarily
19 entered into by the parties hereto. The parties further acknowledge that no warranties or representations
20 have been made on any subject other than as set forth in this Agreement. This Agreement may not be
21 altered, modified, or otherwise changed in any respect except in writing, duly executed by all of the
22 parties or their authorized representatives.

23 13. **Execution and Effective Date.** This Agreement may be executed electronically and in
24 counterpart and is effective on the date by which both parties have executed the Agreement. In
25 compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury
26 that each signatory has concurred in the filing of this document.

27 **IT IS SO STIPULATED AND AGREED.**

Respectfully submitted,

DAVID L. ANDERSON
United States Attorney

Dated: December 11, 2019

By: _____/s/_____
GIOCONDA R. MOLINARI
Assistant United States Attorney

D. VICTORIA BARANETSKY
The Center for Investigative Reporting

Dated: December 11, 2019

By: _____/s/_____
D. VICTORIA BARANETSKY
The Center for Investigative Reporting
Attorney for Plaintiffs